

READING BOROUGH COUNCIL
REPORT BY DIRECTOR OF RESOURCES

TO:	COUNCIL		
DATE:	16 OCTOBER 2018	AGENDA ITEM:	9
TITLE:	CONSTITUTIONAL CHANGES - PROCUREMENT RULES		
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1. PURPOSE AND SUMMARY OF REPORT

- 1.1 Following a review of the Council's Contract Procedure Rules (CPRs), this report sets out proposed changes in order to bring them up to date and in line with best practice. The updated CPRs are attached at Appendix A.
- 1.2 As the Contract Procedure Rules form part of the Constitution (within Part 4: Rules of Procedure) they are a reserved matter and require Council approval.
- 1.3 Subject to agreement, the changes will come into immediate effect and be communicated to officers. The relevant sections of the Constitution will be amended and published on the Council's website.

2. RECOMMENDED ACTION

- 2.1 That the revised Contract Procedure Rules as set out at Appendix A be approved.
- 2.2 That the Head of Procurement and Contracts be authorised to make minor revisions to the Contract Procedure Rules in consultation with the Head of Legal and Democratic Services and the Director of Resources, such revisions to be limited to reflect changes to number and/or section title cross references of other relevant parts of the Constitution if they are subsequently amended (e.g. Financial Regulations or Delegations Register), job titles, titles of guides, titles of forms and/or governance boards that may be referred to in the Rules.
- 2.3 That the Monitoring Officer be authorised to make any required amendment(s) to delegations needed within the Delegations Register and/or the Financial Regulations to reflect the agreed Contract Procedure Rule changes as appropriate.

Appendix A: Updated CPR rules for inclusion in the Council's Constitution. (The 2017 CPRs with the changes highlighted are available on request).

3. POLICY CONTEXT: KEY ISSUES AND CHANGES REQUIRED

3.1 Each Local Authority is required to have Standing Orders/Contract Procedure Rules (CPRs) as part of their Constitution, the aim of which is to ensure all parties, especially Officers, are aware of the processes and procedures to follow when conducting a procurement of a contract.

3.2 The Reading CPRs were last reviewed and revised in January 2016, to bring them in line with the Public Contract Regulations 2015.

3.3 On appointment, the Head of Procurement and Contracts undertook a review the CPRs against current best practice. The recommended amendments arising from the review are set out below:

a) That CPR 3.1 (b) is amended to reference the Concession Contracts Regulations 2016.

For clarity, concession contracts are:

- Contracts for pecuniary interest
- Where the consideration (or “payment”) is either:
 - Simply that the contractor has the right to exploit (that is, to profit from) the works/services that are the subject of the contract.
 - Where the contractor has that right together with some payment from the contracting authority/utility.

For a contract to be considered a concession:

- It must transfer to the contractor the operating risk in exploiting the works or services encompassing demand or supply risk or both; and
- The part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.

b) To reflect the requirements of the General Data Protection Regulations (GDPR) from May 2018, reference to the need to complete a Privacy Impact Assessment is included in the procurement templates, including the Procurement Project Appraisal Form, appended to the CPRs.

c) CPR 7.1 states that all procurements over £25k shall be advertised on Contracts Finder. In practice, this is a low threshold and has therefore been subject to a number of Exemption business cases in line with CPR 4.2 due to the volume of responses and associated administration that can result from such advertisements. From an assessment of similar boroughs Rules, the most common threshold for mandatory advertising is the value above which the procurement is considered High Value, ie in RBC’s context, £100k.

It is therefore recommended that the mandatory advertising limit is raised to this level, noting that advertising below this level is still possible.

To encourage engagement of SMEs as far as is possible and practicable, it is also recommended that:

- The Council publication of contracts on InTend for companies to express an interest on being contacted when they are to be renewed; and/or
 - The Council issues an annual Procurement Plan, which may or may not include the issue of an annual PIN (Prior Information Notice, a form of EU advert), all respondents to be included in any subsequent procurement process.
- d) CPR 30 currently states that waivers are to be “given in exceptional circumstances by full Council or a Committee as appropriate”. CPR 4.2 advises that Exemptions to CPRs may be approved by the relevant Director or Head of Service for below threshold procurements (approval being required at Director level if the reason for the Exemption is urgency). Whilst there are no cases of waivers being requested under CPR 30, it is known that there are a number of Exemption requests under CPR 4.2. However, there is no standard template for such Exemption business cases and no central record of where Exemptions are being applied. It is unusual for variations to CPRs for specific projects to be dealt with under 2 separate provisions.

It is therefore recommended that provision for waivers and Exemptions with a business case be brought together under a single revised CPR 30 with an agreed format of template (as per Appendix B), a defined approval procedure and central record held by Procurement. The approval procedure proposed is in line with best practice, being recommended as the relevant Head of Service/ Director and counter-signed by the Head of Procurement and Contracts.

- e) CPR 28 deals with contract extension but there are no specific provisions clarifying how contract variations other than extensions should be dealt with. The revised drafting therefore proposes relevant additional wording to cover this in CPR 28.
- f) CPR 18.4 states that acceptance of quotes or tenders with a value less than £100,000 may be authorised by the relevant Head of Service or the Project Officer. CPR 20.5 also refers to possible execution of contracts by Director, Head of Service or Project Officer. Within most Local Authorities, ability to enter into any written contract (other than where the value is sufficiently low that the only form of contract required is deemed to be a Purchase Order) is generally only given to Head of Service and above. It is therefore proposed to remove the ability for a Project Officer to authorise acceptance of a quote or tender or execute a contract and instead limit these actions to the relevant Head of Service or Director only.
- g) CPR 18.2 currently states that acceptance of tenders with a value between £100,000 or £500,000 must be authorised with some form of member involvement, be that by Decision Book, a formal decision of Council or Committee or delegated specifically to an officer by a formal decision of Council or Committee. CPR 20.3 replicates this statement. As this value is a total value threshold (as opposed to per annum), this means that there are a high number of operational contract matters that are referred to members in some form. It is therefore proposed to revise both CPR 18.2 and CPR 20.3 to remove reference to Decision Book and replaced with authorisation being possible by Director. This would mean that only

contract matters in excess of the Key Decision threshold value would be referred to members, which would bring Reading in line with standard practice.

3.5 Other recommendations from the review on non-substantive matters were as follows:

- a) To assist with clarity of the Rules, a summary table should be added as a front page stating the processes and procedures, including decision making, to apply at different value thresholds;
- b) The Council Financial Regulations currently reference Legal holding a copy of all contracts but no such reference is made in the CPRs. It is therefore proposed to add this to CPR 20.2, which refers to the sealing or signature of contracts which exceed £100,000;
- c) Roles and responsibilities of Directors and Heads of Service are referred to in both the Council Financial Regulations and the CPRs, so the two should be consistent;
- d) The Exemptions listed under CPR 4.1 do not currently include reference to procurements covered by and conducted under Regulation 32 (Use of the negotiated procedure without prior publication) such as the Hexagon/Arts programming spend so it is recommended that this is added in;
- e) The CPRs often include reference to "Standing Order number xx" so it is recommended to amend them to be consistent with the language used on this and any other standard terms used throughout;
- f) With the introduction of the Head of Procurement and Contracts role, a number of the CPRs around opening tenders and the ability to accept late tenders (CPRs 10 and 11) have been updated;
- g) CPR 4.2 refers to Exemptions to tendering and quotes where frameworks are being used. In reality, these procurements need to: a) confirm legal and valid access to the framework is possible and b) be consistent with the terms of the relevant framework. It is therefore recommended that specific reference to the use of such agreements be included in CPR 24.
- h) CPR 8.4 refers to High Value (>100k) but below the EU goods & services threshold works procurements. This should be re-worded to be clear it refers to use of the open procedure only to bring the CPRs in line with practice and the Regulations. Works procurements above the EU goods & services threshold should be updated to refer to the use of "open, restricted or where appropriate the competitive procedure with negotiation". This would be in line with current practice and the Regulations.
- i) CPR 21 refers to retention of tenders and bids, the requirements of which in relation to unsuccessful bids is more onerous than current legal requirements, so it is proposed to amend this accordingly. Conversely, there is no specific reference

to retention of accepted tenders, bids and contracts, which are required to be retained for 6 years after the contract has ended, so it is proposed to add this.

- j) CPR 22 relates to performance of the supplier, but there is no reference to any Contract Management principles here or elsewhere in the CPRs. CPR 22 has therefore been expanded to include reference to guidance, available through the Council Intranet, IRIS.
- k) It is suggested that CPR 24 (Approved Lists) be moved up to between CPR 4 and CPR 5 as a more logical ordering.

4. NEXT STEPS AND TIMELINES

- 4.1 Subject to agreement by Council, the Constitution will be updated and issued on the Council website
- 4.2 It is also proposed to use the revised CPRs as an opportunity for wider officer briefing on relevant roles, delegations and governance.

5. CONTRIBUTION TO STRATEGIC AIMS

- 5.1 The proposed policies support the achievement of a Council that is fit for the future.

6. EQUALITY IMPACT ASSESSMENT

- 6.1 No specific Equality Impact Assessment (EIA) has been completed in respect of this report. EIAs are to be completed for each project conducted using the rules as appropriate.

7. LEGAL IMPLICATIONS

- 7.1 The Local Government Act 1972 requires the Council to have Standing Orders for how it enters into contracts. The revisions proposed to the Contracts Procedure Rules are all in compliance with current legislation and relevant guidance.

8. FINANCIAL IMPLICATIONS

- 8.1 There are no direct financial implications arising from this report

9. BACKGROUND PAPERS

None



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SUMMARY OF KEY CONTRACT PROCEDURE RULES

Total Value	Competition	Advertising	Authority to award (CPR 18)	Relevant CPR
Up to £10,000	No competitive quotations required, but a written quotation should be sought	None required	Director or Head of Service	CPR 7
<u>QUOTATIONS</u> £10,000 to £99,999	Three competitive quotes	None required or select from an Approved List, DPS or Framework Agreement	Director or Head of Service	CPR 8
<u>TENDERS</u> £100,000 to EU Thresholds	Tenders sought through Open/ Light Touch Regime process	Advert in Contracts Finder or select from an Approved list, DPS or Framework Agreement	For contracts less than £500k: <ul style="list-style-type: none"> • a formal decision of a Director; OR • a formal decision of Council or Committee; OR • or by an officer with an appropriate delegated Authority as set out in the Delegations Register or delegated specifically by a formal decision of Council or Committee. 	CPR 9
<u>EU TENDERS</u> Over EU Thresholds	Tenders sought through Open/ Restricted/ Light Touch Regime/ Competitive Process with Negotiation (unless advised otherwise by Legal)	OJEU advert and Contracts Finder Select from an Approved List or DPS	For contracts above £500k: <ul style="list-style-type: none"> • a formal decision of Council or Committee; OR • or by an officer with an appropriate delegated Authority as set out in the Delegations Register or delegated specifically by a formal decision of Council or Committee. 	CPR 10

Contracts Procedure Rules

Adopted by Council 16 October 2018.

1. Introduction

- (1) These Contracts Procedure Rules set out the rules that must be followed when the Council purchases the supplies, services and works it needs to deliver services (known as procurement). This is an important document as it forms part of the Council's Constitution.
- (2) The Contracts Procedure Rules therefore have three main purposes:
 - to obtain Best Value in the way the Council spends money, so that the Council may in turn offer Best Value services to the public
 - to comply with the laws that govern tendering by local authorities and the spending of public money
 - to demonstrate fair trading, transparency and probity in the award of contracts.
- (3) It is the responsibility of every Director and Head of Service to ensure that these procedure rules are complied with whenever supplies, services, works or concessions are purchased.
- (4) Under the Council's delegations register, Directors and Heads of Service have delegated authority to accept tenders for Council contracts under Contracts Procedure Rules 18 and 21, and to exercise any other functions ascribed to the Head of Service or Project Officer in the Council's Contracts Procedure Rules. This includes where applicable, authorising the execution of contracts as an officer with delegated authority.

2. Governing Principles

- (1) Before commencing a procurement, it is essential that the Project Officer leading the procurement has identified the need and fully assessed any options for meeting those needs.
- (2) As part of its Best Value duties, the Council is required to complete a formal, evidence-based analysis when considering options for the delivery of a service (though the principles should be applied equally to supplies or works). The options include:
 - (a) not providing the service at all (or providing different services to better meet the need)
 - (b) providing the service ourselves ("in-house")
 - (c) getting someone else to provide the service ("outsourcing"/ provision by the private, public or voluntary sector)
 - (d) providing the service in partnership with someone else (with the public, private or voluntary sector)
 - (e) by commissioning jointly with another or other body, including the setting up and/or use of relevant frameworks

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- (f) consideration of sharing services with other public bodies
- (3) The Project Officer must also take into account:
 - (a) The priorities and objectives of the Council's Corporate Plan
 - (b) Any commissioning or procurement category strategies that may be relevant to the contract being procured.
 - (c) Whether an existing contract or framework agreement would be an appropriate means of meeting the identified need
 - (d) Whether tenders or quotations should be sought from an existing approved supplier list
 - (e) Whether the use of a mandated corporate contract is required for the relevant contract.
- (4) Once the need for supplies, services or works is determined, it is then necessary to decide on a process by which they will be acquired. These procedure rules govern any process that results in an official order or invitation to tender being issued, and a contract being entered into.
- (5) These Contracts Procedure Rules explain the minimum standards and base procedure that the Council expects from all staff responsible for buying goods, works, services and concessions on behalf of the Council. The policies and procedures that must be followed are set out more fully in the Council's procurement guidance available on the Council Intranet (IRIS).
- (6) If a sub-contractor, supplier or sub-consultant is to be nominated or named by the Council to a main contractor, quotations or tenders must be invited in accordance with these Contract Procedure Rules and the terms of the invitation shall be compatible with the main contract.
- (7) The Council will maintain a database of all contracts to facilitate the publication of contract information as required by the Public Contracts Regulations 2015 and the Local Government Transparency Code 2014 .
- (8) Every order and contract must clearly and carefully specify the supplies, services, works or concession to be supplied, the agreed programme for delivery and the price and terms for payment together with all other terms and conditions that are agreed.

3. Compliance

- (1) Every contract entered into by the Council shall be entered into for the purpose of the exercise of the Council's functions and shall comply with:
 - (a) all relevant statutory provisions and the latest Best Value Guidance;
 - (b) the relevant European procurement rules (i.e. the EU Treaty, the general principles of EU law and the EU public procurement directives implemented by the UK Regulations, comprising the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016, ["the Regulations"]);
 - (c) the Council's Constitution including these Contracts Procedure Rules, the Council's Financial Regulations, and the Council's scheme of delegation to officers; and
 - (d) the Council's strategic objectives, procurement strategy and policies.

- (2) The highest standards of probity are required of all officers and Councillors involved in the procurement, award and management of Council contracts. Failure to do so may lead to:
- (a) breaches of Codes of Conduct
 - (b) compensation being paid by the Council to anybody adversely affected by the Council's actions, and
 - (c) damage to the Council's reputation.
 - (d) disciplinary action
- (3) As a general rule Councillors and officers must not accept from contractors or potential contractors or from any firm or organisation with whom the Council has had, is having or may have any dealings of any kind, any gift or hospitality otherwise than strictly in accordance with the provisions of the Council's approved Codes of Conduct relating to Members and Officers.

4. Exempt Contracts

- (1) Subject to the overriding provisions of the Regulations, the following types of contracts are exempt from the requirement to seek quotations or tenders in accordance with these Contracts Procedure Rules.
- (a) employment contracts;
 - (b) contracts relating solely to disposal or acquisition of an interest in land;
 - (c) The estimated value of the contract does not exceed £10,000;
 - (d) The contract is in respect of social care, housing or education provision for an individual client with specific personalised care, housing or education requirements and where the estimated contract value is below the current threshold in the Regulations for the light touch regime;
 - (e) The procurement is covered by and conducted in accordance with Regulation 32 of the Public Contracts Regulations 2015 (Use of the negotiated procedure without prior publication).

5. Framework Agreements, Dynamic Purchasing Systems and Approved Lists

- (1) The Council may wish to access and use consortia, buying groups, Dynamic Purchasing Systems, Approved Lists or Framework Agreements set up by another body. Advice should be sought from Procurement, and where appropriate Legal, to confirm the ability of the Council to legally access such arrangements.
- (2) To select a supplier for a specific contract under a single or multi-supplier Framework Agreement or to conduct a Framework Agreement mini competition or award a contract under a Dynamic Purchasing System or an Approved List, the procedure as set out in that Framework Agreement, Dynamic Purchasing System or Approved List must be followed.
- (3) All Framework Agreements, Dynamic Purchasing System agreements, Approved Lists, and specific contracts must be awarded and executed in accordance with Contract Procedure Rules 18 and 21.

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- (4) The Council may maintain approved lists of Suppliers that meet its pre-qualification requirements. Quotations and tenders for contracts that are not subject to the Regulations may be invited from Suppliers included in an approved list. Where the Council intends to use an approved list for services, supplies or works contracts, the process for applying to join the list and the selection criteria to be used to allocate contractors to the lists should itself be advertised.
- (5) The objective criteria to be used to determine which suppliers from the approved list(s) will be invited to quote or tender for work must be published with the advertisement and made available to all suppliers on the list.
- (6) The Council may also establish preferred supplier lists in the form of multiple supplier framework agreements. Such framework agreements will be established and operated in accordance with the procedures set out in the Regulations.

6. Estimating the Contract Lifetime Value

- (1) For consistency, contract values should be calculated in accordance with the Regulations even when the Regulations are not applicable. The Council should make the best use of its purchasing power by aggregating purchases wherever appropriate. Supplies, services, works or concessions shall not be split in an attempt to avoid the applicability of these Contracts Procedure Rules or the Regulations.
- (2) Where a recurring pattern of purchases can be seen for like supplies, services or works, consideration should be given as to whether one or more framework agreement(s) would represent better value in terms of price, service, invoicing or other administration costs. Where the aggregate spend on a given category of supply or service exceeds the relevant thresholds, such requirements must be advertised in accordance with the Regulations.
- (3) In accordance with the Regulations the value of all extensions permitted by the particular legal terms of a procurement must be included when calculating that contract value.

7. Low Value Procurement

- (1) Competitive quotations/tenders are not required for contracts or orders with an estimated value of below £10,000. A written quotation shall be obtained from the supplier before a formal purchase order can be issued.

8. Intermediate Value Procurement

- (1) Subject to Contracts Procedure Rule 9(1) (c), for a procurement valued over £10,000 but below £100,000, at least 3 written tenders or quotations shall be invited before a formal purchase order is issued specifying the supplies, services or works to be provided.
- (2) Subject to Contracts Procedure Rule 18, the lowest tender or quotation shall be accepted unless the Director or Head of Service is satisfied that better value for money will be achieved by accepting a different one and bidders have been made aware of the evaluation criteria to be applied.

9. High Value Procurements

- (1) The following shall be regarded as High Value Procurements ("High Value"):
 - (a) Procurements valued at or above £100,000, or

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- (b) Where the risk in a specific procurement is perceived to be high, or
 - (c) Any procurement of any value that may involve a transfer of staff.
- (2) For all High Value procurements for services and supplies that do not exceed the relevant current thresholds in the Regulations and are not subject to the Light Touch Regime as defined in the Regulations the procedure will be conducted in accordance with the Open procedure as set out in the Regulations but a pre-qualification stage must not be used. The contract opportunity shall be advertised on Contracts Finder in accordance with the Regulations and tenders must be returned using the Council's E-Tendering system. The publication of an advertisement in OJEU is not required, but may be used in appropriate circumstances
- (3) For all High Value procurements for social health education and other specific services listed in Schedule 3 of the Regulations that do not exceed the relevant threshold in the Regulations, the procedure will be conducted in accordance with Section 7 of the Regulations (The Light Touch Regime). The publication of an advertisement in OJEU is not required, but may be used in appropriate circumstances
- (4) For all High Value procurements for Works contracts that are valued below the relevant threshold for public works:
- (a) where the contract value does not exceed the relevant threshold for services and supplies, the procedure will be conducted in accordance with the open procedure as defined and set out in the Regulations;
 - (b) where the contract value exceeds the relevant threshold for services and supplies, the procedure may be conducted in accordance with either the open, restricted procedure or where appropriate, the competitive procedure with negotiation, as defined and set out in the Regulations

In either a or b, above, the contract opportunity shall be advertised on Contracts Finder and tenders must be returned using the Council's E-Tendering system. The publication of an advertisement in OJEU is not required but may be used in appropriate circumstances.

- (5) For all High Value procurements for concessions that do not exceed the relevant current thresholds in the Regulations, the procedure will be conducted in accordance with the principles of the Concessions Regulations 2016. The contract opportunity shall be advertised on Contracts Finder and quotations must be returned using the Council's E-Tendering system. The publication of an advertisement in OJEU is not required but may be used in appropriate circumstances.
- (6) For all procurements of the kind listed in 9(1):

The relevant Director/ Head of Service shall appoint a Project Officer for the procurement.

- (a) The procurement should be managed as a project using appropriate project management methodology with advice sought from and provided by the legal and procurement teams throughout the procurement.
- (b) The procurement must be conducted in accordance with the procedures set out on the Council Intranet (IRIS).
- (c) The Project Officer will complete the Contract Letting Checklist and Procurement Project Appraisal Form before any advertisement is placed or invitations to tender issued.

10. Contracts subject to the Regulations

- (1) Where an estimated value of a contract exceeds the current EU thresholds then the contract shall be tendered in accordance with the Public Contracts Regulations 2015 or the Concessions Regulations 2016 as appropriate using one of the following procedures and after taking procurement and or legal advice:-
Open
Restricted
Competitive with Negotiation
Light Touch Regime.
- (2) Competitive dialogue or innovation partnership procedures must only be undertaken with the prior approval of the Head of Legal and Democratic Services and the Head of Procurement and Contracts

11. Submissions and Opening of Electronic Tenders

- (1) Where a competitive tender procedure is required, every such tender shall be returned using the Council's e-tendering system.
- (2) Tenders for any one contract shall be opened at one time, which shall be as soon as practicable after the closing date for the receipt of tenders stated in the invitation to tender and only in the presence of:
 - a) the Head of Procurement and Contracts or his/her representative, and
 - b) the Head of Service or Project Officer responsible for the invitation of the tenders or his/her representative
- (3) The e-tendering system must be configured to ensure all tenders are locked and not accessible by anyone until the date and time set for opening. The identity of tenderers who have submitted returns must be anonymised until after the tenders have been opened.

12. Submissions and Opening of Paper Tenders

- (1) In exceptional circumstances, and with the approval of the Head of Legal & Democratic Services or the Head of Procurement and Contracts, a tender may be returned in paper (hard copy) form.

Where a paper (hard copy) invitation to tender is required, every such invitation shall state:-

- a) The place where, and the time by which, the tender shall be delivered.
 - b) That no tender will be considered unless it is delivered in a plain, sealed envelope addressed to the Head of Procurement and Contracts, and bearing the word "Tender..." followed by the subject to which it relates.
- (2) On receipt, tenders shall be kept in the custody of the Head of Procurement and Contracts until the time appointed for their opening.
 - (3) Tenders for any one contract shall be opened at one time, which shall be as soon as practicable after the closing date for the receipt of tenders stated in the invitation to tender and only in the presence of:
 - a) the Head of Procurement and Contracts or his/her representative, and
 - b) the Head of Service or Project Officer responsible for the invitation of the tenders or his/her representative.

13. Late Tenders

- (1) Subject to (2) & (3) below, any tender received after the specified time shall be promptly rejected or returned as applicable.
- (2) Any tender that does not comply with Contract procedure rules 11 and 13(1) may nevertheless be considered if the Head of Procurement and Contracts or the Monitoring Officer is satisfied that:
 - (a) there is clear evidence of attempted submission of the tender by the tenderer using the Council's e-tendering system in time for the due date and time and this has not been successful owing to circumstances beyond the control of the tenderer, and the other tenders have not been opened, and
 - (b) no unfair advantage is likely to have been achieved by the absence of compliance.
- (3) Any tender that does not comply with Contracts Procedure Rules 12 and 13(1) may nevertheless be considered if the Head of Procurement and Contracts or the Monitoring Officer is satisfied that:
 - (a) there is clear evidence of despatch by the sender in time for delivery by the due date and time and the other tenders have not been opened, and
 - (b) no unfair advantage is likely to have been achieved by the absence of compliance

14. Tender Evaluation

- (1) Unless a contract is to be awarded on the basis of the lowest price, tenders shall be evaluated in accordance with the relevant Regulations and the evaluation criteria set out in the ITT.
- (2) This evaluation involves scoring tenders objectively by a panel of officers nominated by the Project Officer and/or the Leader or Lead Councillor using criteria which should:
 - (a) be pre-determined and listed in the invitation to tender documentation in order of importance
 - (b) be strictly observed at all times throughout the tender process
 - (c) reflect the principles of Best Value
 - (d) include price
 - (e) consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account
 - (f) include, where applicable, the quality of the tenderers' proposals to transfer staff under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 as amended
 - (g) avoid discrimination or perceived discrimination on the basis of nationality, or other discrimination contrary to the Council's Equality Policy.

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- (h) Where this evaluation methodology is used, any resulting contract must be awarded to the tenderer who submits the most economically advantageous tender, i.e., the tender that achieves the highest score in the objective assessment.
- (i) Where a contract is awarded on the basis of lowest price, the contract will be awarded to the lowest price tender that is compliant with the published requirements.

15. Clarification of Tenders

Where examination of tenders reveals errors or ambiguities which would affect the tender score in an otherwise successful tender and those errors or ambiguities can be resolved easily and quickly the tenderer should be asked to clarify their tender. This clarification must not be permitted to change the tender.

16. Post Tender Negotiation

- (1) Where a procurement is conducted through either the open or restricted procedures no post tender negotiations are permitted.
- (2) Where a Competitive Procedure with Negotiation has been used and post-tender negotiation has been entered into, all tenderers should be invited to submit their best and final offers at the conclusion of negotiations under the same procedure as for the receipt and opening of tenders above. In this case, the best and final offers should be evaluated by revisiting the objective scoring process and revising scores as appropriate.

17. Evaluation Report

- (1) At the conclusion of the tender evaluation process, the Project Officer will compile and agree with the project team and evaluation panel an evaluation report to support the recommendation to award a contract to the successful tenderer and to comply with the Regulations. The report will provide a summary of the tender process and will include full reasons for the decision to recommend the contract award.
- (2) The report must contain the following information:
 - a) the subject-matter and value of the contract, framework agreement or dynamic purchasing system;
 - (b) where applicable, the results of the qualitative selection and reduction of numbers including:
 - (i) the names of the selected candidates or tenderers and the reasons for their selection;
 - (ii) the names of the rejected candidates or tenderers and the reasons for their rejection;
 - (c) where applicable, the reasons for the rejection of tenders found to be abnormally low;
 - (d) the name of the successful tenderer and the reasons why its tender was selected and, where known—

- (i) the share (if any) of the contract or framework agreement which the successful tenderer intends to subcontract to third parties, and
 - (ii) the names of the main contractor's subcontractors (if any);
 - (e) for competitive procedures with negotiation and competitive dialogues, the circumstances which justify the use of those procedures;
 - (f) where applicable, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system;
 - (h) where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders;
 - (i) where applicable, conflicts of interests detected and subsequent measures taken.
- (3) The report will be retained for a period of at least 3 years from the date of award of the contract.

18. Tender Acceptance

1. Acceptance of tenders with a value of £500,000 or greater must be authorised by
 - (a) a formal decision of Council or Committee
 - (b) or by an officer with an appropriate delegated Authority as set out in the Delegations Register or delegated specifically by a formal decision of Council or Committee.
2. Acceptance of tenders with a value between £100,000 or £500,000 must be authorised by
 - (a) a formal decision of Council or Committee
 - (b) or a formal decision of a Director
 - (c) or by an officer with an appropriate delegated Authority as set out in the Delegations Register or delegated specifically by a formal decision of Council or Committee.
3. The decision to authorise acceptance of a tender must be made in accordance with the information contained in the tender evaluation report and the Regulations.
4. Acceptance of quotes or tenders with a value less than £100,000 may be authorised by the relevant Head of Service or Director.
5. Acceptance of a tender submitted by an officer or Councillor must always be authorised by the Head of Service, the Chief Executive and the Leader or responsible Lead Councillor or nominee.
6. The contract shall not be entered into, and a letter of acceptance shall not be sent to the successful tenderer, until the Project Officer has provided evidence of the existence of a delegated power or Council / Committee decision and approved budget to enter into the contract; and the evidence has been accepted by the Head of Procurement and Contracts.

19. Standstill Period

At the conclusion of the relevant competitive process evaluation a standstill period shall be applied. The standstill period will be conducted in accordance with the procedures set out in the Regulations. A standstill period will be applied in all tender procedures including those where the Regulations do not specifically apply.

20. Contract Award Notice

- (1) Where a contract has been tendered pursuant to the Regulations, The Council shall publish a contract award notice in OJEU no later than 48 days after the date of award of the contract

21. Execution of Contracts

- (1) A written contract is required for all supplies of goods, materials, equipment or vehicles or for the execution of works or services including consultancy services to a value exceeding £10,000, regardless of whether a formal tender or a quotation was or should have been obtained.
- (2) Every contract for the supply of supplies, works or services which exceeds £100,000 in value shall be in writing and shall be sealed with the common seal of the Council, or provided the Head of Legal Services is satisfied that the Council's interests are properly protected, signed on behalf of the Council by an officer authorised to use the Council's Common Seal. Master copies of contracts that exceed £100,000 must be held within Legal Services.
- (3) Contracts with a value between £100,000 and £500,000 must be authorised :-
 - (a) By a formal decision of Committee or Council,
 - (b) In writing by an officer with an appropriate delegated Authority as set out in the Delegations Register or under a specific delegation from Council or Committee,
 - (c) or a formal decision of a Director.
- (4) Contracts with a value greater than £500,000 must be authorised :-
 - (a) By a formal decision of Committee or Council, or
 - (b) In writing by an officer with an appropriate delegated Authority as set out in the Delegations Register or under a specific delegation from Council or Committee.
- (5) Any contract not covered by Contracts Procedure Rule 21.(2) may be signed by the Director or the relevant Head of Service.
- (6) No Councillor of the Council, or officer of the Council who is not authorised to do so, shall enter, orally or in writing, into any contract on behalf of the Council.
- (7) In situations of extreme urgency, an oral instruction may be given to a Supplier to provide supplies, works or services provided that written confirmation of the instructions shall be sent to the Supplier within seven working days.

22. Retention of Tenders and Quotations

- (1) All tenders and quotations (accepted and unaccepted) not forming part of a contract signed or sealed in accordance with Contracts Procedure Rule 21 shall be retained by the Head of Service placing the Order for a period of 12 months after the relevant contract commencement date.

- (2) All tenders and quotations that are part of a contract signed or sealed in accordance with Contracts Procedure Rule 21 shall be retained by the Head of Service placing the Order for a period of 6 years after all of the following have happened or been considered:
 - (a) all payments under the Contract have been made.
 - (b) the Head of Service is satisfied that all of the requirements under the terms of the Contract have been successfully carried out whether by the Council or the Contractor and that no claims are likely to arise by or against the Council.
 - (c) they are not likely to be required for inspection as part of the Annual Audit by the Council's external auditors.
- (3) Where the copies retained are electronic versions of these tenders and quotations stored within the Council's E-Tendering and Contract Management System, there is no requirement to retain additional paper copies.

23. Performance

Liquidated Damages

- (1) Every contract for the execution of works which exceeds £100,000 in value or amount shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.

Performance Bond

- (2) In every contract for the execution of works which exceeds £250,000 in value or amount, each contractor shall, subject to paragraphs (3) and (4), below, be required to give security for the due performance of the contract by means of a bond of an approved assurance or guarantee company, or bank, or in such other manner as may be approved by the Strategic Finance Director, in an amount equal to 10% of the total sum of the tender which is the subject matter of such contract.
- (3) Alternatively, the contractor shall deposit with the employer a security at least equal to the amount of the required bond until such time as a bond shall have been completed or a certificate of practical completion of the works has been issued.
- (4) In the event of the contractor starting the work before the completion of the contract and the bond, or making the deposit referred to above, then payments in respect of any work done up to the amount of the bond required shall be withheld by the employer in addition to the normal retention monies until such time as the contract and a bond shall have been completed, or a deposit made, or a certificate of practical completion of the works has been issued.
- (5) Subject to the appropriate committee or sub-committee being informed in each case, a bond shall not be required in relation to highways works in respect of which, in pursuance of advice given by the Department of Transport, the contract is based upon the Model Contract Document (for highways works contracts) issued by the Department.

Contract Monitoring and Management

- (6) Service areas shall ensure that contracts are appropriately managed and monitored to ensure continued Best Value in accordance with Contract Management guidance on the Councils Intranet, IRIS.

24. Corruption

- (1) There shall be inserted in every contract a clause entitling the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor has offered or given to any person an inducement or reward for doing or forbearing to do anything in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by him/her acting on his/her behalf (whether with or without the knowledge of the contractor) or if in relation to any contract with the Council, the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

25. Corporate Contracts

- (1) Corporate contracts are established where appropriate to provide benefits of bulk buying, improved service and reduced administration costs. Where use of a corporate contract has been mandated by the Corporate Management Team (CMT) or one of the Directorate Management Teams (DMT), they must be used, regardless of the value of the individual purchases.
- (2) Corporate contracts must be procured by means of an appropriate procedure in accordance with these Contract Procedure Rules.
- (3) The scope of any mandated contract must be clearly defined and any off contract expenditure within that scope must be authorised by the relevant contract manager or Director.

26. Procurement by Consultants

- (1) Any consultants used by the Council shall be appointed in accordance with these Contract Procedure Rules. Where the Council uses consultants to act on its behalf in relation to any procurement, then the Project Officer shall ensure that the consultants are provided with a copy of these Contract Procedure Rules and that they carry out any procurement in accordance with them. No consultant shall make any decision on whether to award a contract or who a contract should be awarded to. The Project Officer shall ensure that the consultant's performance is adequately monitored.
- (2) Any consultant who has been appointed to seek tenders on behalf of the Council as all or part of their duties shall comply with these Contracts Procedure Rules.
- (3) A consultant shall not act as the Project Officer for a high value procurement.
- (4) Any consultant employed to seek tenders on the Council's behalf must have appropriate indemnities included in their contract.

27. Statistical Returns

- (1) Each year the Council shall make a statistical return to the relevant government department for onward transmission to the European Commission concerning the contracts awarded during the year under the European rules.
- (2) The Procurement Manager shall be responsible for this statistical return and will make the necessary arrangements for information to be collected annually. All Directorates shall provide the information necessary to compile this return.

28. Contract Variation or Extension

- (1) Any contract may be varied or extended where permitted by the Regulations. Variations should either be in accordance with the existing contract's terms or within permitted variation limits as stated by the Regulations. Extensions should only be where the existing contract's terms allow for such an extension. Any such variation or extension shall be authorised in line with CPRs 18 and 20.
- (2) The Project Officer shall always be satisfied that the variation or extension will achieve Best Value for money and is reasonable in all the relevant circumstances. The Project Officer shall complete a Procurement Project Appraisal Form before the contract is formally signed with the contractor.

29. Termination of Contract

- (1) Early termination of any contract by agreement or in accordance with the termination provisions set out in the contract is subject to the following authorisation:
 - Contracts with a value in excess of £500,000 - by Committee or Council
 - Contracts with a value between £100,000 and £500,000 - by the responsible Director
 - Contracts with a value below £100,000 - by the responsible Head of Service.

30. Waivers of Contract Procedure Rules

- (1) A waiver to Contract Procedure Rules is a permission to let a contract without complying with one or more of the Contract Procedure Rules. A waiver to Contract Procedure Rules may be granted subject to conditions. Authority to award a contract will be required in accordance with CPR 18 in addition to the exception to Contract Procedure Rules.
- (2) Only the Head of Procurement and Contracts, or her authorised deputy is able to grant a waiver to these Contract Procedure Rules. Applications for waivers must follow the process set out by Procurement, be made in writing and signed by the relevant Director or Head of Service, and must include the exception that is requested and the justification for the exception.
- (3) Waivers to Contract Procedure Rules will never be given retrospectively and waivers for extensions are unlikely to be granted if there is less than six months left on the contract and so must be submitted well in advance of the decision needing to be made. Similarly, an application for a waiver to Contract Procedure Rules, to allow a contract to be let without genuine competition will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an exception to Contract Procedure Rules.
- (4) If an application to let a contract without genuine competition is requested, the Head or Service or Director responsible for the contract must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value for money.
- (5) Procurement will keep a register of all waivers to Contract Procedure Rules, which shall be available by appointment for inspection by members of the Council and the public.
- (6) A waiver to Contract Procedure Rules is not required in the following

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circumstances:

- (a) placing an order under an existing corporate contract or single supplier Framework Agreement;
- (b) as part of a partnering contract that contemplates a series of contracts with a single supplier, provided the entire series has been duly authorised as appropriate for its value;
- (c) legislation requires the Council to let a contract differently from these Contract Procedure Rules;
- (d) placing an order under an arrangement, of which the Council is an affiliate, which has gone through an EU compliant competitive process;

31. Definitions

“Best Value for Money”

The optimum combination of whole life costs and benefits to meet the customer’s requirement. Such term equates to the EU procurement requirement “most economically advantageous offer”;

“Committee”

The Committee with delegated responsibility for the function or service covered by the contract, or the Policy Committee on behalf of the responsible Committee.

“Contract Letting Checklist”

The document at Appendix 1 to these Standing Orders which must be completed by the Project Officer as required as a means of monitoring proper compliance with these Standing Orders and, where appropriate, other Council requirements;

“Contracts Register”

The register held and maintained by the Council containing details of contracts entered into by the Council with a value of £5,000 or more;

“Framework Agreement”

An agreement, which allows the Council to call off from a supplier to provide supplies, services or works in accordance with the terms of the agreement. The Framework Agreement itself usually constitutes a non-binding offer with no obligations on the Council to call off from the Supplier. If the Council calls off from the Supplier a binding contract comes into being. A Framework Agreement can be a binding agreement where it is executed as a deed;

“ITN”

Invitation to negotiate;

“ITT”

Invitation to tender;

“OJEU

” Official journal of the European Union;

“PIN”

Prior Information Notice for publication in OJEU;

“Procurement Project Appraisal Form”

The planning document that is completed before a high value procurement is started that documents the business case, option appraisal, risk assessment , TUPE, Social Value and Equalities considerations that are relevant to the procurement.

“Project Officer”

A person appointed in accordance with Standing Order 9 with responsibility for co-ordinating procurement procedure for a particular contract and completing the Contract Letting Checklist and Procurement Project Appraisal Form;

“Regulations”

The Public Contract Regulations 2015 and the Local Government Transparency Code 2014 and any amendment to replacement of or re-enactment thereof

“RFQ”

Request for quotations;

“Supplier”

Any person or body of persons providing, or seeking to provide, supplies, services or works to the Council.

PROCUREMENT PROJECT APPRAISAL FORM

PROJECT:

When: To be completed at Project Initiation

Purpose: Provides approval for allocating resources up to:

- Contract Notice (OJEU/Contracts Finder Advertisement)
- Framework Agreement - Mini Competition - Invitation to Tender
- Agreement to Participate in Collaborative Procurement led by external organisation

Mandatory for contracts in excess of £100,000 lifetime value.

Procurement Project Approval - Stage 1
Project Initiation - Procurement Strategy

Submitted by(Project Officer)	
Job Title	
Contract/Project	
Project Number	
Date	
Contract Value	
Equality Impact Assessment (EIA) required?	
Privacy Impact Assessment (PIA) required?	
Above EU threshold?	
OJEU contract type	
Contracts Letting Checklist (CLC) completed?	
Lead Member briefed?	
Head of Service/Senior Sponsor	
Legal Services Adviser	
Procurement Adviser	

1. Introduction/Background

2. Business Case
The rationale for letting the contract.

3. Option Appraisal of Procurement Approach - Alternatives rejected	
Option	Reason for not recommending:

4. Contribution to Budget savings

5. Recommended Procurement Route and Rationale (see 3 above)

6. Outline Timetable of Procurement up to contract mobilisation/start	
Action	Completion Date

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7. Resources Required		
Staff:	Named Officer	Estimated number of days
Project Officer		
Legal Services		
Corporate Procurement		
Finance Team		
Insurance Team		
Health & Safety Team		
Sustainability Team		
Quality Assurance Team		
Equal Opportunities Team		
Business Continuity Team		
Human Resources		
ICT		
Other:		
Other:		

8. Proposed Contract Award decision process/timetable

9. Outline Risk Register			
(n.b. Risks of the procurement process chosen rather than the project/contract as a whole)			
RISK	Likelihood/ Impact High (H) Medium (M) Low (L)	Mitigation	Owner

10. Social Value Considerations	
<p>N.B. There is a <u>statutory duty</u> to consider these issues prior to commencement of the procurement. Failure to complete this section could render the procurement challengeable with no adequate defence.</p> <p>Priority areas for RBC are:</p> <ul style="list-style-type: none"> • Training and skills development for staff working on Council contracts • Promotion of the Council's Living Wage Policy and, where appropriate, require the application of the Council's low pay policy to staff working for the Council's contractors • Achieving the Council's Zero carbon targets • Meeting the objectives of the Council's Sustainable Community Strategies 	
Proposed actions:	

11. Equalities Considerations	
<p>This section is required to determine whether or not an Equalities Impact Assessment is required. If so, full details are available at:</p> <p>http://inside.readinggov.uk/Documents/Deployer/HR/Equalities/EqualityImpactAssessmentToolkit.doc</p> <p>How does this proposal relate to eliminating discrimination; promoting equality; promoting community relations?</p>	
Do you have evidence or reason to believe that some (racial, disability, gender, sexuality, age and religious belief) groups may be affected differently from others? (Think about your monitoring information, research, national data/research etc).	Yes/No
Is there already public concern about potentially discriminatory practices/impact or could there be? Think about complaints, consultation/feedback.	Yes/No
If you answer yes to either of the above questions you need to do an Equality Impact Assessment (EIA). Please attach the completed EIA to this document.	
If you answer no to both of the above questions please complete the following statement:	
An equality impact assessment is not relevant because:	

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12. TUPE considerations

13. Data Security & GDPR considerations

13. Potential Conflict of Interest
<p>Throughout the procurement the project officer is required to take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.</p> <p>The concept of conflicts of interest also covers any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.</p> <p>Please outline below any potential conflicts of interest that have been identified or may arise and the action taken or planned to remedy the position.</p>

Approved by:		
Name		Date
	Head of Service	
	on behalf of Corporate Procurement	

CONTRACT LETTING CHECKLIST

Directorate	
Service	
Subject of Contract	
Name of Project Officer	

You should complete this form for all contracts with a lifetime value of £100k or over. You should circulate a copy to all officers identified in the document and also produce it at the Tender Opening and for Contract Audit.

◆ *Give a brief summary of the purpose of the contract:*

.....

◆ *Member Involvement*

Action	Insert Names/Action
I have briefed Councillor:	
Who is Lead Councillor for:	
The member involvement will be:	

◆ *Tender Process*

Is a Framework Contract available?	YES/NO
Which type of value is involved? (See Contract Procedure Rules 6, 7, 8 and 9)	EU/HIGH/INTERMEDIATE/LOW
Are you relying on a waiver to the the Contract Procedure Rules? If yes, which one? (See Contracts Procedure Rule 30)	YES/NO CONTRACTS PROCEDURE RULE No.
Is European Tendering required?	YES/NO
If yes, which procedure?	OPEN/RESTRICTED/NEGOTIATED/COMPETITIVE PROCEDURE WITH NEGOTIATION/COMPETITIVE DIALOGUE
Are there TUPE implications?	YES/NO
Has planning permission be obtained?	YES/NO/NOT APPLICABLE
The Procurement Project Appraisal Form been completed	YES/NO

◆ *Budgets*

The Annual Budget value is	£
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The Lifetime budget value is	£
The Oracle Financials Code is/are:	R-
	R-
	R-

◆ **Advisors**

Lead Accountant is	
Lead Solicitor is	
Procurement Adviser is	
Technical Advisor (2) is	
Technical Advisor (3) is	
Technical Advisor (4) is	
Technical Advisor (5) is	

- ◆ I will critically review all the contract documents, and not assume that the way it has always been done is good enough for the future. I am aware of the relevant Standing Orders and Financial Regulations.
- ◆ I have prepared the outline timetable for the key stages of letting this contract, and I have attached a copy to this checklist
- ◆ I have considered the need to consult with service users, residents, neighbours, Councillors and colleagues; and I have considered a range of corporate implications such as sustainability, equalities, planning, property and trade union issues.
- ◆ I have considered whether any conflict of interest may arise in the process of letting the contract and will take appropriate action to remedy any that have been identified or may arise.
- ◆ My line manager (whose signature is below) has read this checklist and confirmed my appointment as the Project Officer for this contract. I accept the responsibilities of Project Officer for this contract as described in the Standing Orders on Contracts.

Signed by the Director/Head of Service in accordance with Contracts Procedure Rule 8.(4)c)

Signature: Date

Name:

Signed by the Project Officer

Signature: Date

Name:

Project Team Members:

Forward Copy to :

Lead Member	
Contract File	
Line Manager	
Project Officer	
Lead Accountant	
Lead Solicitor	
Technical Advisor 1	
Technical Advisor 2	
Technical Advisor 3	
Technical Advisor 4	
Technical Advisor 5	
Corporate Procurement	
Internal Audit	
ICT Advisor	
HR Advisor (if TUPE applies)	

Business Case for a Waiver to Contract Procedure Rules

A waiver to Contract Procedure Rules is a permission not to comply with certain Council's Contract Procedure Rules (CPRs) when awarding or extending a contract. It is not an authority to enter into a contract without further relevant approval.

Instructions:

1. Complete this request form including signature by the Head of Service or Director as appropriate.
2. Send the form to the Head of Procurement and Contracts for review and approval as appropriate.
3. Procurement will retain a central record of approved waivers and send confirmation of the approved waiver to the service.
4. Retain the signed waiver record with all relevant contract documentation.

Requested information to be completed by Contract Manager.

Contract name:	
Supplier:	
Contract Value:	£
Annual Saving:	£
Proposed Start Date:	
Proposed End Date:	

Service:	
Director:	
Author of this request:	<i>Name, Title and extension number</i>

1. Which Contract Procedure Rule(s) are you seeking a waiver from?

CPR xxx..... which states:

.....

.....

.....

[Set out the number and text of the Contract Procedure Rule(s) that apply]

2. Why do you think a waiver is justified?

(Please state the reasons why you should not follow the Contract Procedure Rules in full and an exemption situation applies)

3. How does your proposal demonstrate value for money?

Please state benchmarking work / cost comparison to other suppliers for the same service to show value for money.

Please also confirm that you have the budget available to fund the proposed contract and confirm the budget source.

4. What are the legal risks associated with the waiver?

(Please address the risk of challenge within the supply market in question for this value of contract when justifying your proposal)

[Advice should be sought from the Procurement and/or Legal team as appropriate]

5. Appendices (if appropriate)

- Options Appraisal
- Benchmarking Information
- Committee or other relevant decision
- Legal Briefing
- Other, please detail

.....

Authority of the Head of Service/ Director

I authorise a waiver to CPRs as outlined above / subject to the following conditions:

.....
.....
.....
.....

Signed:

Date:

Position/ Job Title:

Authority of the Head of Procurement and Contracts

I authorise a waiver to CPRs as outlined above / subject to the following conditions:

.....
.....
.....
.....

Signed:

Date:

Position/ Job Title: HEAD OF PROCUREMENT & CONTRACTS